

This report is intended solely for the information and use of the Universal Service Administrative Company and the Federal Communications Commission, and is not intended to be and should not be used by anyone other than these specified parties.

September 9, 2009

cc: Management of the Beneficiary

ATTACHMENT:
FINDING

Detailed Information Relative to Material Noncompliance (Finding)**Finding No.** HC2008BE126_F01**Condition**

[REDACTED] However, the support received for Local Switching Support ("LSS") and High Cost Loop ("HCL") was calculated based upon the previous quarter's line count reported of [REDACTED] resulting in a monetary impact on support of an underpayment of LSS and HCL in the amount of \$43,551 and \$492,810 respectively. [REDACTED]

Criteria

Federal Communications Commission ("FCC") Rule §36.611(h) requires a rural telephone company to submit the number of working loops as of December 31st of the calendar year preceding each July 31st filing.

In addition, FCC Rule §36.612 requires rural telephone companies in service areas where an eligible telecommunications carrier has initiated service and has reported line count data pursuant to §54.307(c) must update the information submitted to NECA on July 31st pursuant to §36.611(h) according to the following schedule.

- (1) Submit data covering the last nine months of the previous calendar year and the first three months of the existing calendar year no later than September 30th of the existing year;
- (2) Submit data covering the last six months of the previous calendar year and the first six months of the existing calendar year no later than December 30th of the existing year;
- (3) Submit data covering the last three months of the second previous calendar year and the first nine months of the previous calendar year no later than March 30th of the existing year.

Effect**Cause****Monetary Impact on Support**

The monetary impact on support is an underpayment of Local Switching Support and High Cost Loop in the amount of \$43,551 and \$492,810 respectively, [REDACTED]

Recommendation**Management**

[Open for Management's Response]

Response ¹**Comment No.**

HC2008BE126_C02

Condition

[REDACTED]

Criteria

FCC Rule §54.201(d) requires that a common carrier designated as an eligible telecommunications carrier under this section shall be eligible to receive universal service support in accordance with section 254 of the Communications Act of 1934 (as amended) (the "Act") and shall, throughout the service area for which the designation is received:

(1) Offer the services that are supported by federal universal service support mechanisms under subpart B of this part and section 254(c) of the Act, either using its own facilities or a combination of its own facilities and resale of another carrier's services (including the services offered by another eligible telecommunications carrier); and

(2) Advertise the availability of such services and the charges therefore using media of general distribution.

Effect

[REDACTED]

Cause

[REDACTED]

Monetary Impact on Support

[REDACTED]

Recommendation

[REDACTED]

Management Response ¹

[Open for Management's Response]

¹ Although we have included management's written responses to our finding, such response has not been subjected to the examination procedures applied in our examination and, accordingly, we do not express an opinion or provide any form of assurance on the appropriateness of the response or the effectiveness of any corrective action described therein.

APPENDIX A –DEFINITIONS

The definitions of a control deficiency and a significant deficiency are as follows:

A control deficiency in an entity's internal control over compliance exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent or detect noncompliance with a type of compliance requirement of a federal program on a timely basis.

A significant deficiency is a control deficiency, or combination of control deficiencies, that adversely affects the entity's ability to administer a federal program such that there is more than a remote likelihood that noncompliance with a type of compliance requirement of a federal program that is more than inconsequential will not be prevented or detected by the entity's internal control.

A material weakness is a significant deficiency, or combination of significant deficiencies, that results in more than a remote likelihood that noncompliance with a type of compliance requirement of a federal program that is material will not be prevented or detected by the entity's internal control.

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May 20, 2011

CONFIDENTIAL

Wayne M. Scott
Vice President, Internal Audit Division
Universal Service Administrative Company
2000 L Street, NW, Suite 200
Washington, DC 20036

Re: Coral Wireless d/b/a Mobi PCS Report HC-2008-126

Dear Mr. Scott:

Enclosed please find the Beneficiary Response of Coral Wireless LLC (Coral) to the updated finding of Deloitte & Touche LLP ("Deloitte") in the above-referenced audit. Coral is filing this updated Beneficiary Response in accordance with your letter dated April 21, 2011 to Mr. Barry Rinaldo, Chief Financial Officer of Coral Wireless d/b/a Mobi PCS and the filing deadline extension approved by Teleshia Delmar.

Coral also hereby requests a meeting with you, David Capozzi, and Karen Majcher of USAC, together with Joan Schweizer of Deloitte, to discuss conclusion of the audit once USAC and Deloitte has had the opportunity to review the updated Beneficiary Response. Please contact me to schedule a meeting at a mutually convenient date and time.

Please contact me if you have any questions or need additional information.

Sincerely,



Todd D. Daubert
Counsel for Mobi PCS

Enclosure

cc: David Capozzi – USAC Acting General Counsel
Karen Majcher – UCAC Vice President High Cost / Low Income
Joan Schweizer, Deloitte & Touche LLP

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May 20, 2011

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Joan Schweizer
Audit Director
Deloitte & Touche LLP
1750 Tysons Boulevard
Suite 800
McLean, VA 22102

Re: Coral Wireless d/b/a Mobi PCS Report HC-2008-126

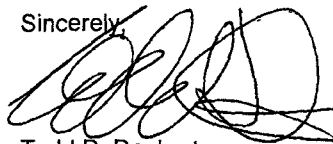
Dear Ms. Schweizer:

Enclosed please find a courtesy copy of the Beneficiary Response of Coral Wireless LLC (Coral) to the updated finding of Deloitte & Touche LLP ("Deloitte") in the above-referenced audit. Coral is providing the copy to you in light of your past involvement with the audit.

As the attached transmittal letter to Wayne M. Scott, Vice President, Internal Audit Division, Universal Service Administrative Company (USAC) indicates, Coral has requested a meeting with you, Wayne Scott, David Capozzi and Karen Majcher of USAC to discuss conclusion of the audit once USAC and Deloitte has had the opportunity to review the updated Beneficiary Response. Please contact me to schedule a meeting at a mutually convenient date and time.

Please contact me if you have any questions or need additional information

Sincerely,



Todd D. Daubert
Counsel for Mobi PCS

Enclosure

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**Beneficiary Response
May 20, 2011**

Coral Wireless, LLC, d/b/a Mobi PCS ("Coral"), hereby responds to the Independent Accountants' ("Deloitte") updated finding for the Report on Compliance Relating to High Cost Support Received by Coral Wireless LLC d/b/a Mobi PCS (HC-2008-126) for the Year Ended June 30, 2008 (the "Updated Report"). *See* Attachment 1. Coral strongly objects to:

1. The content and conclusions of the Updated Report;
2. The audit process followed by Deloitte and the Universal Service Administrative Company ("USAC") to reach the content and conclusions of the Updated Report; and
3. The description in USAC's letter dated April 21, 2011 to Barry Rinaldo, Chief Financial Officer of Coral Wireless d/b/a Mobi PCS, ("USAC Letter"), *see* Attachment 1, of the audit history and findings of the initial Report on Compliance Relating to High Cost Support Received by Coral Wireless LLC d/b/a Mobi PCS (HC-2008-126) for the Year Ended June 30, 2008 (the "Initial Report").

For the reasons set forth in this Response, a decision by Deloitte and USAC to finalize and publish the version of the Updated Report attached to the USAC letter would constitute a knowing and willful violation of federal law that would cause foreseeable and substantial harm to Coral.

Key Statutory and Regulatory Requirements that Govern the Audit

Federal law requires USAC to administer the universal service fund ("USF") consistent with the applicable:

- Federal statutes;
- Rules, orders and directives promulgated by the Federal Communications Commission ("FCC");
- Government and FCC accounting requirements; and
- Other regulations.

See, e.g., 47 U.S.C. 254; 47 C.F.R. §§ 54.702(b)-(n), 54.711, 54.715; Government Auditing Standards ("GAO Yellow Book" or "GAGAS"), July 2007 Revision; Memorandum of Understanding between the FCC and USAC, effective September 9, 2008. In administering the USF, USAC must also conduct its operations in a manner that enables the FCC to comply with all applicable federal statutes, including accounting requirements, on an ongoing basis. *See e.g.*, 47 C.F.R. § 54.702(n).

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The FCC's rules explicitly prohibit USAC from interpreting unclear provisions of the statute or rules, or interpreting the intent of Congress. *See* 47 C.F.R. § 54.702(c). Where the Act or the FCC's rules are unclear, or do not address a particular situation, the rules explicitly mandate that USAC seek guidance from the FCC. *See id.*

The FCC's rules also explicitly prohibit USAC from making policy, or even advocating substantive policy provisions relating to universal service support mechanisms before the FCC. *See* 47 C.F.R. § 54.702(c)-(d). As such, USAC cannot, consistent with applicable law, adopt interpretations of unclear rules as a means for engaging in substantive policy advocacy before the FCC through the USAC decision appellate process. In light of this explicit restriction on USAC, independent auditors hired by USAC likewise cannot use the appellate process to advocate policy by unlawfully adopting interpretations of unclear rules.

The FCC's rules further require that audits of USF beneficiaries by USAC or any independent auditor hired by USAC be conducted in accordance with generally accepted government auditing standards. *See* 47 C.F.R. § 54.702(n). These standards include the GAGAS set forth in the GAO Yellow Book.

The ethical principles that guide the work of auditors who conduct audits in accordance with GAGAS are:

- the public interest;
- integrity;
- objectivity;
- proper use of government information, resources, and positions; and
- professional behavior.

With respect to integrity, the GAGAS make clear that “[i]ntegrity includes auditors’ conducting their work with an attitude that is ***objective, fact-based, nonpartisan, and nonideological with regard to audited entities*** and users of the auditors’ reports . . . [C]ommunications with the audited entity, those charged with governance, and the individuals contracting for or requesting the audit are expected to be honest, candid, and constructive.” GAO Yellow Book, Section 2.08 (emphasis added). With respect to objectivity, the GAGAS make clear that “[o]bjectivity includes being ***independent in fact and appearance*** when providing audit and attestation engagements, ***maintaining an attitude of impartiality, having intellectual honesty*** . . .” GAO Yellow Book, Section 2.10 (emphasis added).

GAGAS require both USAC and the independent auditor to be transparent and disclose all relevant facts and legal support for all proposed findings, particularly in light of the prohibition on interpretation of the law by USAC. The auditor must “obtain sufficient evidence to provide a reasonable basis for the conclusion that is expressed in the [audit] report.” GAO Yellow Book, Section 6.04(b). The auditor must, in the audit report, present:

- Sufficient, appropriate evidence to support the findings and conclusions; and
- Descriptions of limitations or uncertainties within the reliability or validity of evidence.

GAO Yellow Book, Sections 8.14 & 8.15. The auditor must also provide “a draft report with findings for review and comment by responsible officials of the audited entity and others [in

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order to help] the auditors develop a report that is *fair, complete, and objective.*” GAO Yellow Book, Section 6.45 (emphasis added). Accordingly, GAGAS require both USAC and the independent auditor to be transparent and disclose all relevant facts and legal support for all proposed findings, particularly in light of the prohibition on interpretation of the law by USAC.

If the audited entity’s comments are inconsistent or in conflict with the findings, conclusions or recommendations in the draft report, GAGAS require auditors to evaluate the validity of the audited entity’s comments and either:

- Explain in their report their reasons for disagreement with the audited entity; or
- Modify their report as necessary if they find the comments valid and supported with sufficient, appropriate evidence.

GAO Yellow Book, Section 6.49.

The rules and GAGAS require an independent auditor to issue a [REDACTED] if the auditor would have to rely upon an unclear rule to support a proposed finding, because the FCC’s rules expressly prohibit USAC and independent auditors hired by USAC from interpreting any unclear rule -- even if the proposed interpretation would otherwise be perfectly reasonable. Consequently, where an interpretation of an unclear rule is currently pending before the FCC, and thus the FCC itself could apply the interpretation on a prospective basis only, an auditor cannot rely upon the interpretation to issue a finding of material non-compliance. An independent auditor who is being pressured by USAC or the FCC to issue an audit report that is inconsistent with the applicable law, including the GAGAS, has a legal and ethical duty to withdraw from the audit.

Background and History of this Audit

Initiation and Prosecution of the Audit

On December 30, 2008, Coral received notice from Deloitte that it had been engaged by USAC to examine the compliance of Coral, relative to Study Area Code No. 629002, with 47 C.F.R. Part 54, Subparts C and D of the FCC’s Rules and related Orders governing Universal Service Support for the High Cost Program (“HCP”) relative to disbursements of \$14,971,972 for telecommunication services made from the USF fund during the year ended June 30, 2008. *See Attachment 2.* In January 2009, Coral received and responded to information requests from Deloitte and continued to work with Deloitte personnel throughout February and March 2009.

On February 27, 2009, Brian Morris of Deloitte’s Audit and Risk Enterprises group requested additional information from Coral that only incumbent wireline carriers record and supply to USAC and the FCC: the information requested was not relevant for, or even gathered by, wireless carriers. *See Attachments 3 and 4.* On March 2, 2009, Peter Gose, Coral’s Director of Regulatory Affairs, held a WebEx teleconference to help Mr. Morris and other Deloitte auditors better understand the USF data reporting requirements and why certain information Deloitte had requested was not relevant for wireless carriers. During that teleconference, Coral also provided a detailed explanation of its line count methodology and why its conservative approach results in a significant underreporting of Coral total working lines. *See Attachments 4 and 5.*

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On September 14, 2009, Patricia DiMaria, Senior Manager at Deloitte, transmitted Deloitte's initial draft audit report to Coral. The report contained two erroneous findings. The first erroneous finding was that Coral had not advertised supported services as required by the FCC's rules. The second erroneous finding was that Coral had been underpaid by USAC. In its response, Coral identified both errors. *See* Attachments 6 and 7. Additionally, Patricia DiMaria transmitted Deloitte's first draft management representation letter. *See* Attachment 8.

On September 16, 2009, Patricia DiMaria transmitted a second draft audit report that (1) retracted the finding of non-compliance with respect to advertising of supported services but (2) retained the erroneous finding that Coral had been underpaid by USAC. *See* Attachments 9 and 10. Patricia DiMaria also transmitted Deloitte's second draft management representation letter. *See* Attachment 11. Coral promptly notified USAC and Deloitte that the remaining underpayment finding was erroneous, and USAC agreed with Coral's observation. *See* Attachment 12.

On October 22, 2009, Coral received notification from Patricia DiMaria of Deloitte that the firm would be continuing the audit to test a period germane to USF high cost fund support payments. During November and December of 2009, Coral supplied all additional information that Deloitte requested. *See* Attachment 13.

See Attachments 14 and 15. Additionally, Krista McClintock Smith transmitted Deloitte's third draft management representation letter. See Attachment 16. Specifically, [REDACTED]

On February 17, 2010, Krista McClintock Smith notified Coral that Deloitte had spoken with the Moss Adams consulting firm and, on the basis of the citation of a definition for working loops in a 1997 Universal Service Data Request issued by the FCC on Forward-Looking Mechanism for High Cost Support to Non-Rural LECs in DA 97-1433 CC Docket No. 96-45, [REDACTED]. See Attachment 17.

On February 22, 2010, Krista McClintock Smith transmitted Deloitte's third draft audit report, which contained one erroneous finding that [REDACTED]. See Attachments 18 and 19. On February 24, 2010, Krista McClintock Smith notified Coral that Deloitte would correct errors in its draft audit report that Coral had identified. Deloitte had erroneously referenced Section 36.611 of the FCC's rules, 47 C.F.R. § 36.611, which applies only to wireline incumbent local exchange carriers ("ILECs") rather than Subsections (a) and (c) of Section 54.307 of the FCC's rules, 47 C.F.R. § 54.307, which apply to wireless competitive Eligible Telecommunications Carriers ("CETCs"). See Attachment 20. On

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March 1, 2010, Krista McClintock Smith transmitted Deloitte's fourth draft audit report, which [REDACTED]
See Attachment 21.

On March 4, 2010, Krista McClintock Smith notified Coral that Deloitte was in the process of conferring with Warinner, Gesinger & Associates, LLC, ("WGA"), USAC's consulting firm for conducting quality assurance reviews of its externally sourced audits, with respect to Coral's management response to Deloitte's audit report. See Attachment 22.

[REDACTED]
[REDACTED] Later that same day, Krista McClintock Smith notified Coral of WGA's belief that (1) there is no clear answer about the proper interpretation of the term "working loop" as used in Section 54.307 of the FCC's rules, 47 C.F.R. § 54.307, and (2) the FCC ultimately would have to rule on the issue since USAC has no authority to interpret unclear FCC rules, [REDACTED]
[REDACTED] See Attachments 23 and 24. Specifically, Krista McClintock Smith notified Coral and its outside counsel that Deloitte would base its [REDACTED] on Deloitte's own interpretation of the FCC rules. See Attachment 25.

On March 5, 2010, Coral together with its outside counsel held a teleconference with Deloitte personnel Krista McClintock Smith, Joan Schweizer, and Jonathan Bass to discuss the basis for Deloitte's one finding. Jarret Rea of WGA also participated in the teleconference. Coral described its position as to why it believed Deloitte's audit finding was not based on an accurate application of the FCC's rules. Deloitte noted that it would consult further with the WGA experts and take Coral's position under advisement. On March 5, 2010, Krista McClintock Smith notified Coral that Deloitte and WGA had conferred further and indicated that Deloitte would move forward with [REDACTED] due to the inherent ambiguity of Section 54.307(b). Krista McClintock Smith also transmitted Deloitte's fifth draft audit report, which contained [REDACTED] citing limitations in the scope of Deloitte's examination [REDACTED]
[REDACTED] See Attachments 26 and 27.

On March 8, 2010, Krista McClintock Smith transmitted Deloitte's sixth draft audit report (*i.e.*, the Initial Report), which contained [REDACTED] on the basis of Deloitte's inability to clearly determine whether Coral's policies are in conflict with the FCC's Rules. The earlier [REDACTED] citing scope limitations was removed. See Attachments 28 and 29. Additionally Krista McClintock Smith transmitted Deloitte's fifth and final draft management representation letter for Coral to complete and return. See Attachment 30.

On March 18, 2010, Coral transmitted a signed management representation letter and its management response to Deloitte. Both response documents from Coral were based on the Initial Report. See Attachments 31, 32 and 33.

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Initial Audit Finding Transmitted March 8, 2010

[REDACTED]

[REDACTED]

[REDACTED]

In accordance with Deloitte's decision, the "Effect" portion of the Initial Report provided as follows:

It is unclear whether the inclusion of lines during the [REDACTED]
[REDACTED] is in accordance with the definition
of a working loop in Section 54.307(b).

The "Cause" portion of the Initial Report provided as follows:

Apart from Section 54.307(b) of the FCC's Rules, no FCC rules,
orders or decisions explicitly address the definition of CETC
working loops for universal service support purposes.

The "Monetary Impact on Support" portion of the Initial Report provided as follows:

The monetary impact on support was not quantified, [REDACTED]
[REDACTED] however, total disbursements made from the
Universal Service Fund during the year ended June 30, 2008
amounted to \$14,971,972.

The "Recommendation" portion of the Initial Report provided as follows:

The Beneficiary should seek guidance from the FCC on whether
their policy, including the interpretation of a working loop is in
keeping with the FCC Rules.

Reopening of the Initial Audit Finding

On April 21, 2011, USAC notified Coral by letter (*i.e.*, the USAC Letter) that:

The USAC Internal Audit Division (IAD) reviewed the audit work
papers and supporting documentation completed by [Deloitte],
including the working loop audit finding noted by [Deloitte]. IAD
determined that [Deloitte] has obtained adequate documentation to
support the working loop finding.

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Accordingly, the IAD extended the opportunity for Coral “to review [Deloitte’s] updated finding and Coral Wireless’ original response.” *See* Attachment 1: USAC Letter at 1. Coral requested, and was granted by Teleshia Delmar, an extension until May 20, 2011 to file its response.

The Reopening of the Audit Is Inconsistent with the Applicable Rules

The manner in which USAC and Deloitte have reopened the Initial Audit Finding is inconsistent with the FCC’s rules and the requirements of GAGAS. Indeed, the USAC Letter and Updated Report seriously mischaracterize both the initial audit history and the Initial Report in a biased manner which suggests that the audit is no longer being conducted with integrity and objectivity as required by GAGAS. Specifically, the USAC Letter and the proposed Updated Report contain the following mischaracterizations and errors:

Mischaracterization of the Scope of the Audit

As explained in the initial draft report received by Coral on September 14, 2009 and in five subsequent revisions leading to, and including, the Initial Report transmitted by Deloitte to Coral on March 8, 2010, USAC engaged Deloitte:

to examine the compliance of [Coral], relative to Study Area Code No. 629002, with 47 C.F.R. Part 54, Subparts C and D of the Federal Communication Commission’s (“FCC”) Rules and related Orders governing Universal Service Support for the High Cost Program (“HCP”) relative to disbursements of \$14,971,972 for telecommunication services made from the Universal Service Fund during the year ended June 30, 2008.

Independent Accountant’s Report dated March 9, 2010. *See* Attachment 29. Notably, the scope of the audit included only Subparts C and D of Part 54 of the FCC’s Rules. Consistent with this description, Deloitte and Coral never discussed compliance with any other subparts of the FCC’s Rules during the audit process, and Deloitte never examined, or purported to examine, compliance with any other subparts of the FCC’s rules.

In stark contrast to the description of the scope of the audit in the Initial Report, the USAC Letter now inaccurately claims that USAC:

previously engaged the services of the independent accounting firm of Deloitte . . . to perform an examination and provide an opinion concerning [Coral’s] compliance with 47 C.F.R. Part 54, relevant sections of 47 C.F.R. Parts 32, 36, 64, and 69, and relevant Commission orders (collectively, the Rules) and to assist in fulfilling FCC requirements related to the Improper Payment Information Act (IPIA) relative to specific study area High Cost Program (HCP) support disbursements made by USAC during the period July 1, 2006 through June 30, 2007 (Audit Period).

USAC Letter at 1. USAC now claims that the audit encompasses all of Part 54 rather than merely Subparts C and D. USAC also now claims that the audit encompasses Parts 32, 36, 64 and 69 of the FCC’s Rules, which is inexplicable because:

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- the FCC has not authorized USAC to conduct audits of wireless Eligible Telecommunications Carriers (“ETCs”) for compliance with Parts 32, 36, 64 and 69; and
- Coral, as a wireless carrier, is not subject to Parts 32, 36 or 69, and Part 64 is irrelevant with respect to wireless ETC compliance with universal service requirements.
 - Part 32, the FCC’s Uniform System of Accounts, sets forth a standard chart of account methodology that applies only to dominant wireline incumbent local exchange carriers. *See* 47 C.F.R. § 32.11(a).
 - Part 36 applies only to wireline incumbent local exchange carriers. *See, e.g., Jurisdictional Separations*, 16 FCC Rcd 11382, 11385, para. 3 (2001) (providing background on the Jurisdictional Separations rules).
 - Part 64 is irrelevant with respect to wireless ETC compliance with Part 54 because there is no requirement for a wireless ETC to apportion its accounts between regulated and non-regulated operations.
 - Part 69 applies only to wireline local exchange carriers for the development of interstate access charges. *See, e.g.,* 47 C.F.R. §§ 69.1 *et. seq.*

The date of the audit period was also changed from the year ending June 30, 2008 to the year ending June 30, 2007. The Updated Report does not provide any explanation for the expanded line count from the Initial Report.

The substantial changes to the description of the scope of the audit suggests that USAC and Deloitte may be trying to bolster the claim that the proposed interpretation of Section 54.307 of the FCC’s rules is reasonable by seeking unlawfully to expand the audit’s scope to cover additional Parts, including bring Part 36 upon which USAC and Deloitte must rely to support the proposed interpretation. Regardless of the intent, the scope and timeframe for the audit cannot lawfully be changed at this late date.

Mischaracterization of the Initial Report

The USAC Letter incorrectly claims that Deloitte’s Initial Report resulted in the [REDACTED] USAC Letter at 1. This claim is incorrect in every aspect.

First, Deloitte concluded that [REDACTED] is in accordance with the definition of a working loop in Section 54.307(b).” As such, far from concluding that support was improper, Deloitte concluded that they were unable to reach a decision with respect to whether the inclusion of a limited subset of lines was improper. *See* Effect portion of the Initial Report.

Second, Deloitte never suggested that 100% of HCP support for the Audit Period was improper. Rather, Deloitte had focused solely on the propriety of the reporting of [REDACTED] lines. Indeed, Deloitte ultimately did not even quantify the monetary impact on support since it [REDACTED] *See* Monetary Impact on Support portion of the Initial Report.

The USAC Letter also inexplicably claims that Deloitte’s decision to [REDACTED] [REDACTED] “was the result of Coral Wireless’ lack [sic] understanding with [sic] the rules.”

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USAC Letter at 1. The regulations and GAGAS require USAC and all independent auditors hired by USAC to be qualified to issue final audit reports based on their own research and opinions, and to base all audit reports on sufficient and appropriate evidence. GAO Yellow Book, Section 6.04(b). It simply is not possible for any misunderstanding by an audited entity to cause an error in a final audit report that is the result of an audit that has been prosecuted in accordance with federal law, including the GAGAS. Moreover, GAGAS require auditors to present in the audit report:

- Sufficient, appropriate evidence to support the findings and conclusions; and
- Descriptions of limitations or uncertainties within the reliability or validity of evidence.

GAO Yellow Book, Sections 8.14 and 8.15. Accordingly, [REDACTED] based solely upon Coral's understanding of the rules, GAGAS required Deloitte to so note in the Initial Report. To the contrary, Deloitte purported to [REDACTED] based solely upon its own research and conclusion that:

It is unclear whether the inclusion of lines [REDACTED] date is in accordance with the definition of a working loop in Section 54.307(b). . . . Apart from Section 54.307(b) of the FCC's Rules, no FCC rules, orders or decisions explicitly address the definition of CETC working loops for universal service support purposes.

In short, there is no support for USAC's claim that Deloitte's decision [REDACTED] "was the result of Coral Wireless' lack [of] understanding [of] the rules," a decision that would have been unlawful if USAC's description were accurate.

Inappropriate Withdrawal of the Initial Report and Proposed Updated Report

In the USAC Letter, USAC explains that the USAC Internal Audit Division ("IAD") reviewed the audit work papers and supporting documentation provided by Deloitte. Based on its review, "IAD determined that [Deloitte] has obtained adequate documentation to support the working loop finding. . . . IAD would like to extend the opportunity for Coral Wireless to review the Firm's updated finding and Coral Wireless's original response." USAC Letter at 1.

Both the substance of the Updated Report as well as the process by which it was developed are fundamentally inconsistent with the applicable rules, including the GAGAS requirements. The Updated Report fails to identify any new documentation that was not identified and addressed in the Initial Report. The Updated Report similarly fails to address Coral's original response or any of the information Coral provided Deloitte. The Updated Report further fails to identify any legal or factual basis for the proposed interpretation of Section 54.307 of the FCC's rules, or any limitations or uncertainties about the reliability and validity of the evidence. Finally, the Updated Report fails to explain why Deloitte [REDACTED] based on exactly the same record that existed when Deloitte concluded that applicable law, including its ethical obligations under GAGAS, [REDACTED]

These failures are fundamentally inconsistent with GAGAS, and they suggest that USAC may have pressured Deloitte to withdraw its [REDACTED] and issue a finding of material non-compliance without regard to the applicable law and relevant facts. However, GAGAS

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require both USAC and the independent auditor to be transparent and disclose all relevant facts and legal support for all proposed findings, particularly in light of the prohibition on interpretation of the law by USAC. Since the proposed updated finding is fundamentally inconsistent with Coral's response, GAGAS require USAC and Deloitte to evaluate the validity of the audited entity's comments and:

- Explain in their report their reasons for disagreement with the audited entity; or
- Modify their report as necessary if they find the comments valid and supported with sufficient, appropriate evidence.

GAO Yellow Book, Section 6.49. In light of the extensive communications between Deloitte and Coral regarding (a) Section 54.307, (b) the GAGAS requirements, and (c) the FCC rules that explicitly prohibit USAC and its independent auditors from interpreting unclear provisions of the rules or engaging in policy advocacy, the USAC Letter and Updated Report raise serious questions about the integrity and objectivity of USAC and Deloitte.

In short, the USAC Letter and the Updated Report reflect a bias which suggests that USAC and Deloitte are not conducting the audit with the integrity and objectivity required by law. Specifically, the numerous and serious flaws in the Updated Report suggest that USAC and Deloitte are not "conducting their work with an attitude that is *objective, fact-based, nonpartisan, and nonideological* with regard to [Coral]." GAO Yellow Book, Section 2.08 (emphasis added). The flaws also demonstrate that communications with Coral have not been "honest, candid, and constructive," GAO Yellow Book, Section 2.08, and suggest that USAC and Deloitte have failed to maintain "an *attitude of impartiality, having intellectual honesty.*" GAO Yellow Book, Section 2.10 (emphasis added). It also suggests that USAC and Deloitte are failing to meet the requirement of GAGAS that they be "*independent in fact and appearance.*" GAO Yellow Book, Section 2.10 (emphasis added).

The Updated Finding Is Based on an Unlawful Interpretation of an Unclear Rule

The proposed updated finding is based on an interpretation of the term "working line" in Section 54.307 of the FCC's Rules, 47 C.F.R. § 54.307, which provides in relevant part as follows:

In order to receive support . . . , a competitive eligible telecommunications carrier must report to the Administrator the number of *working loops* it serves in a service area pursuant to the schedule set forth in paragraph (c) of this section. 47 C.F.R. § 54.307(b) (emphasis added).

* * *

For universal service support purposes, *working loops* are defined as the number of working Exchange Line C&WF loops used jointly for exchange and message telecommunications service, including C&WF subscriber lines associated with pay telephones in C&WF Category 1, but excluding WATS closed end access and TWX service. *Id.* (emphasis added).

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Section 54.307 was written for wireline carriers rather than wireless carriers. Indeed, Section 54.307 explicitly defines the term “working loops” for universal service support purposes in terms of wireline facilities -- loops -- that wireless carriers do not have and thus do not use. All of the illustrative examples provided in the rule itself (*i.e.*, “C&WF subscriber lines associated with pay telephones in C&WF Category 1, but excluding WATS closed end access and TWX service”) similarly refer to wireline facilities that wireless carriers do not have and thus do not use. Accordingly, the definition of working loops in Section 54.307 makes no sense in the wireless context, because none of the terms used in the definition itself refer to the facilities that wireless carriers could use to provide service. Consequently, Section 54.307 is inherently unclear with respect to wireless ETCs.

Faced with the inherent ambiguity created by the plain terms of Section 54.307 as applied to wireless carriers, the Updated Report seeks to create clarity by relying upon extrinsic evidence -- an unrelated and inapplicable definition from an appendix to Part 36 of the FCC’s rules -- to introduce a new term that is not used in Section 54.307 itself but that could make sense in the wireless context: “revenue generating.” However, the fact that USAC and Deloitte must resort to extrinsic evidence in order to support the reading of Section 54.307 upon which the proposed updated finding is based demonstrates conclusively that the Updated Report can be supported only by interpreting an unclear rule in violation of Section 54.702(c) of the FCC’s rules. 47 C.F.R. § 54.702(c) (“The Administrator may not make policy, *interpret unclear provisions of the statute or rules*, or interpret the intent of Congress. Where the Act or the Commission’s rules are unclear, or do not address a particular situation, the Administrator shall seek guidance from the Commission.”)(emphasis added). In other words, the proposed updated finding’s reliance on terms from an unrelated and inapplicable rule proves beyond question that the finding is based on an unlawful interpretation of an unclear rule.

Apart from Section 54.307 of the FCC’s Rules, no FCC rules, orders or decisions explicitly address the definition of CETC “working loops” for universal service support purposes. For this reason, the Personal Communications Industry Association (“PCIA”) filed a petition requesting clarification of the definition of “working loops” in Section 54.307 as applied to wireless CETCs. *See* Petition for Reconsideration and/or Clarification of the Personal Communications Industry Association, CC Docket No. 96-45 (filed Jan. 3, 2000). Specifically, PCIA asked the FCC to clarify Section 54.307 “with respect to wireless carriers and find that a ‘working loop’ for a wireless carriers is designated by a working phone number.” *Id.* at 5. Although the FCC later denied PCIA’s Petition on different grounds, the FCC made clear that it was considering the requested clarification of the term “working loops” in Section 54.307 as applied to wireless ETCs in the portability proceeding:

The issues raised by PCIA are within the scope of the separate proceeding to comprehensively reexamine the Commission’s rules governing portability of high-cost support, which is currently before the Joint Board. *We emphasize that our denial of PCIA’s petition here does not in any way prejudice what action we ultimately may take in the portability proceeding.*

Federal-State Joint Board on Universal Service, 18 FCC Rcd 22559, 22639 (2003) (emphasis added; citation omitted). The Commission has yet to take any action in the portability proceeding, and thus the term “working loop” in Section 54.307 of the FCC’s rules as applied to wireless ETCs continues to be inherently unclear. Therefore, USAC and Deloitte cannot,

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consistent with applicable law and thus GAGAS, base a finding of material non-compliance as proposed in the Updated Report upon its proposed interpretation -- or indeed any interpretation -- of the term “working loop” in Section 54.307 as applied to wireless ETCs like Coral.

The Proposed Interpretation of Section 54.307 Is Fundamentally Inconsistent With Applicable Law

The proposed interpretation seeks to use a definition from an irrelevant rule that does not apply to wireless carriers in order to interpret the applicable, but unquestionably unclear, rule upon which the proposed finding is based: Section 54.307, 47 C.F.R. § 54.307. Specifically, the proposed interpretation introduces the concept of “revenue producing” into the definition of “working loops” in Section 54.307(b), which does not refer to revenue, by referring to an unrelated appendix to Part 36 of the FCC’s rules. *See* 47 C.F.R. § 36 *et. seq.*, Appendix – Glossary (“Working Loop - A revenue producing pair of wires, or its equivalent, between a customer’s station and the central office from which the station is served.”)

Part 36 of the FCC’s rules, which governs the jurisdictional separations process for allocating costs between the state and federal jurisdictions in order to calculate wireline interstate access charges, is not relevant for universal service purposes. Moreover, Part 36 applies only to wireline ILECs, not competitive carriers like wireless CETCs. Because wireline ILECs have functioning loops to every house whether the house receives service or not, the reference to “revenue producing” lines in Part 36 is designed to ensure that only loops being used for a customer at the time are counted for the purposes of jurisdictional separations. By contrast, wireless CETCs do not have a “loop equivalent” in place until a number is assigned to a customer and configured in the network, so the Part 36 “revenue producing” distinction is irrelevant for wireless carriers. Moreover, although the jurisdictional separations process does not apply to wireless CETCs like Coral, the definition of Working Loops for the purposes of the separations process focuses upon whether the loop generates revenue rather than the specific timing of the payment of such revenue, which is consistent with Coral’s interpretation of the definition of “Working Loop” for universal service purposes.

The revenue distinction is also irrelevant for both wireline and wireless carriers for universal service purposes, which is why Section 54.307 does not refer to revenues. Specifically, Section 54.307’s definition of working loop does not focus upon whether a line is producing a specific type of revenue at a particular moment in time, which the FCC confirmed when it requested data for universal service purposes:

- Working loops include loops used for all services: message and special, **revenue and non-revenue**.
- Non-working loops include defective loops, loops reserved for some future activity, and loops with a pending connect status.

Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Order, 12 FCC Rcd 9803, 9805, para. 7 (1997) (emphasis added). Although this definition is not binding, it reflects the FCC’s interpretation of the term “working loops” for universal service purposes, which does not focus on whether the loop generates revenue at all. Coral notes that none of the lines at issue here were “non-working loops” because the lines were neither defective, reserved for future

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activity (Coral does not reserve telephone numbers for customers or offer seasonal use telephone numbers), nor designated as pending connect (which is inapplicable to wireless carriers).

The FCC recently confirmed its view that lack of payment or usage by a customer does not immediately disqualify a line for universal service support merely because the line is not “revenue producing” as claimed in the proposed interpretation of Section 54.307. *See Telecommunications Carriers Eligible for Universal Service Support (Virgin Mobile Designation as an Eligible Telecommunications Carrier)*, DA 10-2433, WC Docket No. 09-197 (rel. Dec. 29, 2010) (“*Virgin Mobile Designation*”). In the *Virgin Mobile Designation*, the FCC accepted Virgin Mobile’s voluntary commitment to implement:

a non-usage policy in all states where it provides Lifeline service. Virgin Mobile’s non-usage policy would require Virgin Mobile to identify customers that have not used its Lifeline service for 60 days and not seek support for such customers if they do not actively use the Lifeline service during a 30-day grace period. . . . Under this policy, if no usage appears on a Virgin Mobile Lifeline customer’s account during any continuous 60-day period, Virgin Mobile will promptly notify the customer that the customer is no longer eligible for Virgin Mobile Lifeline service subject to a 30-day grace period. During the 30-day grace period, the customer’s account will remain active, but Virgin Mobile will engage in outreach efforts to determine whether the customer desires to remain on Virgin Mobile’s Lifeline service. If the customer’s account does not show any customer-specific activity during the grace period (such as making or receiving a voice call, receiving or sending a text message, downloading data or adding money to the account), Virgin Mobile will deactivate Lifeline services for that customer. In addition, the Company will not seek to recover a federal Universal Service Fund subsidy for the free minutes provided to the customer during the grace period or thereafter report that customer on its USAC Form 497.

Virgin Mobile Designation, ¶24 and n.53. Accordingly, the lines are eligible for support for 60 days after a customer has stopped using them altogether and before the ETC has undertaken any investigation to determine whether the customer even wants the service anymore. The lines will also remain eligible for support as long as the customer uses the service by the 89th day, [REDACTED]. [REDACTED] The FCC’s position on Lifeline grace-periods confirms that the proposed interpretation of Section 54.307 is fundamentally inconsistent with the applicable law.

In brief, Coral’s interpretation of the FCC’s rules is reasonable, and its March 31, 2007 filing is accurate and compliant with such rules. By contrast, the proposed interpretation seeks to introduce terms from irrelevant and inapplicable rules in a way that is not even appropriate for those rules let alone the universal service rules at issue here.

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The Proposed Interpretation Is Fundamentally Inconsistent With the Facts

The industry does not, and cannot, apply the myopic interpretation of “revenue producing” upon which the proposed finding ultimately is based. Until a telephone number is actually disconnected pursuant to the service plan, it is impossible for any carrier – post-paid or pre-paid – to know on any given date whether any particular line is “revenue producing” under the myopic interpretation upon which the proposed finding is based.

All carriers providing service under a post-paid plan do not know during any given service period whether they will be subsequently paid for services provided, and nearly all carriers, *whether offering a post-paid plan or a pre-paid plan*, continue to provide service for a defined time period after a payment is missed. If the customer ultimately does not pay, then the line would be considered “non-revenue producing” for the final 30-90 day period preceding disconnection under the proposed interpretation. By contrast, if the customer pays at any time before disconnection, the line will have been a “revenue producing” line the entire time. For this reason, wireless carriers typically count every line that is assigned to a particular customer as a “working line” until the line is disconnected.

Although “revenue producing” is not relevant for the definition of “working loops” for universal service purposes, the description of Coral’s services and policies in the USAC Letter and Updated Report is simplistic and inaccurate. For example, the Updated Report states in relevant part as follows:

The Beneficiary provides wireless services on a month-to-month basis where the services are paid in advance. As the wireless service is prepaid, *the line ceases to be revenue producing at the end of the prepaid period*, and thus should not be included in the filings.

“Effect” portion of Updated Report (emphasis added). Accordingly, the proposed finding assumes that a line under Coral’s prepaid service plan does not generate – and is not capable of subsequently generating – any revenue during the time period after a missed payment.

In reality, the service initiation and disconnection dates of a line under Coral’s pre-paid plan are based on total revenue generated by fixed fees, variable fees and equipment sales, which is consistent with wide-spread industry practices. Like many providers of wireless services under post-paid or pre-paid plans, Coral does not immediately disconnect lines for late payment of service fees, which is important to all customers, including particularly the low-income customers that comprise a large portion of Coral’s customer base. A Coral line will not be disconnected if the customer pays at any point between the missed payment date and disconnection of the line. Accordingly, a line is revenue-producing for Coral from the time it is assigned to a particular customer until the point the line is disconnected pursuant to the plan.

The Proposed Interpretation of Section 54.307 Could Only Be Applied by the FCC on a Prospective Basis

The FCC itself could not apply the proposed interpretation of Section 54.307 of the FCC’s rules on a retroactive basis. The courts and the FCC have consistently held that when a rule is unclear, the FCC’s subsequent interpretation of that rule should be given prospective application only.

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The regulatory framework governing USAC and its auditing activities prohibits USAC and any independent auditors it hires from making policy or interpreting unclear rules, and explicitly requires USAC to seek guidance from the FCC when a rule is unclear. *See* 47 C.F.R. § 54.702. As such, the rules require that clarification of unclear rules be given by the FCC as part of the agency's general rulemaking activities for all parties rather than in specific compliance audits of particular beneficiaries.

The retroactive application of a new or changed policy is considered "extraordinary" and is disfavored by the law. *See Yakima Valley Cablevision v. FCC*, 794 F.2d 737, 746 (D.C. Cir. 1986). Indeed, a long "line of Supreme Court decisions encourag[e] prospective rulemaking as the method for clarifying murky statutes or issuing needed regulations." *See Motion Picture Association of America, Inc. v. Oman*, 750 F. Supp. 3, 8 (D.D.C. 1990). The Supreme Court has explicitly stated that retroactive rulemaking is a disfavored legal concept which must meet stringent guidelines to be upheld:

Retroactivity is not favored in the law. Thus, congressional enactments and administrative rules will not be construed to have retroactive effect unless their language requires this result. (Citations omitted.) By the same principle, a statutory grant of legislative rulemaking authority will not, as a general matter, be understood to encompass the power to promulgate retroactive rules unless that power is conveyed by Congress in express terms. (Citations omitted.) . . . Even where some substantial justification for retroactive rulemaking is presented, courts should be reluctant to find such authority absent an express statutory grant.

Bowen v. Georgetown, 488 U.S. 204, 208-09, 109 S.Ct. 468, 471 (1988). When reviewing the actions of agencies that have clarified or modified their rules and policies, the Court of Appeals for the District of Columbia Circuit likewise has made clear that:

courts have long hesitated to permit retroactive rulemaking and have noted its troubling nature. When parties rely on an admittedly lawful regulations and plan their activities accordingly, retroactive modification or rescission of the regulation can cause great mischief.

See Yakima Valley Cablevision, 794 F.2d at 745-46. Accordingly, agencies may "not retroactively change the rules at will," and "[e]lementary considerations of fairness dictate that individuals should have an opportunity to know what the law is and to conform their conduct accordingly." *NetworkIP v. FCC*, 548 F.3d 116, 122 (D.C. Cir. 2008)(citation omitted).

This justifiable reluctance to retroactively modify a party's obligations under Commission rules and policies has led the FCC to apply its decisions prospectively in cases where the rule or policy in question was unclear. For example, in the *Intercall Order*, 23 FCC Rcd 10731 (2008), the FCC addressed a question of interpretation where it had been unclear to the industry and public whether a particular class of telecommunications providers was subject to the USF contribution requirements, an ambiguity that was due in part to the Commission's own actions. Specifically, the FCC found that it had been unclear whether or not conference-calling service providers like Intercall were obligated to make USF contributions based on their "end user" revenues. InterCall argued, and the FCC agreed, that the "actions (or the lack thereof) in

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certain Commission proceedings may have contributed to the industry's unclear understanding of stand-alone audio bridging providers' direct contribution obligation." *Id.* at 10738, para. 23. Thus, due to the lack of clarity regarding the direct contribution obligations that was caused in part by the FCC's own actions, the FCC found that prospective application of its decision was warranted.

The facts against retroactive application of a rule interpretation in this case are even more compelling than they were in the *Intercall Order*. Specifically, as discussed above, the definition of "working loops" under section 54.307 is inherently unclear as applied to wireless carriers, so much so that the wireless industry, through PCIA, requested the FCC to confirm that the same interpretation Coral uses is correct. *See* PCIA Petition at 5 ("PCIA requests that the Commission clarify or, as necessary, reconsider this requirement with respect to wireless carriers and find that a 'working loop' for a wireless carrier is designated by a working phone number."). Although the FCC assured the wireless industry and the public in general that it was considering the requested clarification, the FCC has yet to do so, as noted above. Consequently, the Commission has contributed to the ambiguity inherent in Section 54.307 by failing to clarify the definition of a "working loop" as that term relates to wireless CETCs like Coral in the decade since PCIA first asked the Commission to clarify that very issue. As such, this situation is one "in which some new liability is sought to be imposed on individuals for past actions which were taken in good-faith reliance on [FCC] pronouncements," *NLRB v. Bell Aerospace*, 416 U.S. 267, 295, 94 S. Ct. 1757, 1772 (1974), which is exactly the type of situation in which retroactive "clarifications" are impermissible, particularly in light of the regulatory framework for USAC audits.

In sum, the Administrative Procedures Act and relevant precedent make clear that, under these circumstances, the FCC could apply the proposed interpretation only on a prospective basis. As such, even if USAC sought guidance from the FCC, the proposed interpretation of Section 54.307 could not be applied in the Coral audit. Therefore, neither USAC nor Deloitte can rely upon the proposed interpretation of Section 54.307 to issue a finding of material non-compliance by Coral.

Moving Forward With the Proposed Finding Would Be a Knowing and Willful Violation of the Law

The rule upon which the proposed finding is based – Section 54.307 – unquestionably is unclear, and Coral has provided ample evidence that the proposed finding is fundamentally inconsistent with the applicable law and the relevant facts. The FCC's rules explicitly prohibit USAC and its independent auditors like Deloitte from interpreting policy or advocating substantive policy positions. *See* 47 C.F.R. § 54.702(c). The GAGAS prohibit USAC and its independent auditors like Deloitte from issuing a final finding that is inconsistent with the law and silent with respect to both Coral's position and the legal or factual support for the underlying rule interpretations.

Under these circumstances, a decision by USAC or Deloitte to move forward with the proposed finding would be a knowing and willful violation of the law that would cause foreseeable and substantial harm to Coral. As explained above, applicable law mandates that USAC and/or Deloitte either reinstate the initial [REDACTED] [REDACTED] To the extent USAC or Deloitte nonetheless decide to move forward with any finding of material non-compliance, Coral reserves the right to submit an

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additional response to the extent the Updated Report is amended in any way in response to the issues Coral raises in this response.

Conclusion

Section 54.307, the rule upon which the proposed finding is based, is unclear. Clarification of Section 54.307 is currently pending before the FCC, which can apply any clarification on a prospective basis only. Since the FCC could apply the proposed interpretation of Section 54.307 on a prospective basis only, it cannot form the basis of finding of material non-compliance by Coral. Therefore, the Coral audit should be concluded with a finding of no material non-compliance. Alternatively, [REDACTED] in the initial finding report should remain in place and effective.

USAC

Universal Service Administrative Company

April 21, 2011

Mr. Barry Rinaldo
Coral Wireless d/b/a Mobi PCS
Chief Financial Officer
733 Bishop St., Suite 1200
Honolulu, HI 96813

Re: Coral Wireless d/b/a Mobi PCS Report HC-2008-126

Dear Mr. Rinaldo:

The Universal Service Administrative Company (USAC) at the direction of the Federal Communication Commission (FCC or Commission) Office of Inspector General (OIG), previously engaged the services of the independent accounting firm of Deloitte & Touché, LLP (Firm) to perform an examination and provide an opinion concerning Coral Wireless d/b/a Mobi PCS's (Coral Wireless) compliance with 47 C.F.R. Part 54, relevant sections of 47 C.F.R. Parts 32, 36, 64, and 69, and relevant Commission orders (collectively, the Rules) and to assist in fulfilling FCC requirements related to the Improper Payment Information Act (IPIA)¹ relative to specific study area High Cost Program (HCP) support disbursements made by USAC during the period July 1, 2006 through June 30, 2007 (Audit Period).

[REDACTED]

The USAC Internal Audit Division (IAD) reviewed the audit work papers and supporting documentation completed by the Firm, including the working loop audit finding noted by the Firm. IAD determined that the Firm has obtained adequate documentation to support the working loop finding.

IAD would like to extend the opportunity for Coral Wireless to review the Firm's updated finding and Coral Wireless' original response. Please see the enclosure. If Coral Wireless would like to provide additional documentation or update its response, please provide such information by **May 6, 2011**.

If there are any matters or issues that you would like to make us aware of, or if you have any questions or concerns, please feel free to contact Teleshia Delmar or myself at 202-776-0200.

¹ See 31 U.S.C. § 3122; Public Law 107-300, Stat. 2350, November 26, 2002.